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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
	:	Chapter 11
Genesis Global Holdco, LLC, <i>et al.</i> , ¹	:	
	:	Case No. 23-10063 (SHL)
Debtors.	:	(Jointly Administered)
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**OBJECTION OF CHAINVIEW CAPITAL FUND, LP TO
DEBTORS' MOTION (I) FOR RELIEF FROM THE AUTOMATIC STAY, TO THE
EXTENT APPLICABLE, TO ALLOW FOR SETOFF OF MUTUAL OBLIGATIONS
AND (II) TO ALLOW CERTAIN CLAIMS IN CONNECTION THEREWITH**

Chainview Capital Fund, LP ("Chainview"), by and through its undersigned counsel, respectfully submits this objection ("Objection") to the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), *Debtors' Motion (I) for Relief from the Automatic Stay, to the Extent Applicable, to Allow for Setoff of Mutual Obligations and (II) to Allow Certain Claims in Connection Therewith* (the "Motion")² (Doc. No. 1374). In support of this Objection, Chainview respectfully states as follows:

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number (as applicable), are: Genesis Global Holdco, LLC (8219); Genesis Global Capital, LLC (8564); Genesis Asia Pacific Pte. Ltd. (2164R). For the purpose of these Chapter 11 Cases, the service address for the Debtors is 175 Greenwich Street, Floor 38, New York, NY 10003.

² Capitalized terms used but not defined herein shall have the meanings ascribed in the Motion.

PRELIMINARY STATEMENT³

1. The Motion seeks this Court’s imprimatur to provide an improper windfall for the Debtors. The Motion, without directly saying so, seeks a declaration from this Court to the applicable date for determining the USD conversion price for setoff purposes, as applied to the digital assets lent by the GGC Debtor to Chainview and the collateral posted by Chainview with the GGC Debtor.

2. Chainview asserts that the appropriate valuation date is when it terminated its lending contract with the GGC Debtor pre-petition on November 15, 2022. The Debtors have not provided an authority, other than general bankruptcy principles, for its proposed valuation date. Accordingly, the Court should deny the Motion as to the Chainview Claim.

BACKGROUND

3. On November 20, 2020, Chainview and debtor Genesis Global Capital, LLC (the “GGC Debtor”) executed that certain Master Loan Agreement (as amended, modified, or supplemented prior to the date hereof, the “MLA”). The MLA provided that Chainview could, from time to time, borrow digital currencies (“Cryptocurrency”) and/or United States dollars from the GGC Debtor, subject to the terms and conditions stated therein. Under the MLA, the terms of each individual borrowing would be set forth in a separate loan term sheet (each, a “Loan Term Sheet” and, together with the MLA, the “Loan Documents”).

4. On November 11, 2022, Chainview and the GGC Debtor executed a Loan Term Sheet pursuant to which Chainview borrowed 175 BTC from the GGC Debtor (the “Loan”). To secure the Loan, Chainview provided the GGC Debtor with collateral (the “Collateral”) with a

³ Terms used, but not defined, in the preliminary statement shall have the meanings ascribed to them in this Objection, unless otherwise noted.

value equal to 135.00% of the Loan's value at the time of the borrowing. The Collateral consists of 12.32 BTC, 299.999391 ETH, and 3,399,499.75 USD.

5. The Loan was an open term borrowing, and Chainview had the option to repay the Loan at any time (the "Prepayment Option"). Under the MLA, Chainview could exercise the Prepayment Option by providing two-days' notice to the GGC Debtor.

6. On November 15, 2022, Chainview notified the GGC Debtor that it was exercising the Prepayment Option and repaying the entire balance of the Loan. Notwithstanding Chainview's provision of notice in accordance with the Loan Documents' requirements, the GGC Debtor failed to close out the Loan in violation of the terms of the Loan Documents.

7. Under the MLA, a material default by either Party in the performance of any condition or provision of the Loan Documents constitutes an event of default. Upon an event of default, the non-defaulting party is entitled to exercise any rights available to it under any agreement or applicable law.

8. After Chainview provided notice that it was exercising the Prepayment Option, the GGC Debtor announced that it was suspending its lending business. This notice constituted another default under the MLA, which provides that it is an event of default for either party to notify the other of its inability to or its intention not to perform its obligations under the MLA, or to otherwise disaffirm, reject, or repudiate any of its obligations thereunder.

9. On November 25, 2022, Chainview notified the GGC Debtor that events of default had occurred and demanded the return of the Collateral. The GGC Debtor thereafter failed to return the Collateral as required by the Loan Documents. Under the MLA, the failure of either party to transfer Collateral constitutes an event of default.

10. Due to the GGC Debtor's repeated material breaches of the Loan Documents prior to the Petition Date, Chainview is entitled to monetary damages for breach of contract, plus attorneys' fees, costs, expenses, and interest.

11. In addition, on November 20, 2020, Chainview and the GGC Debtor executed that certain Master Borrow Agreement (the "MBA"), under which the GGC Debtor could, from time to time, borrow digital currencies or United States dollars from Chainview. On May 17, 2022, Chainview and the GGC Debtor executed a Loan Term Sheet under the MBA pursuant to which the Debtor borrowed 4,000,000 USD from Chainview (the "May 17 Loan"). As of the Petition Date, the amount owing to Chainview from the GGC Debtor on account of the May 17 Loan was 20,821.54 USD.

12. On May 19, 2023, Chainview filed its proof of claim (the "Claim") assigned claim number 351. The Claim is also identified schedule F number GGC 3.1.0104 on Exhibit 1 to the Setoff Plan Supplement.

13. On February 23, 2024, the Debtors filed the Motion that seeks to improperly reduce Chainview's Claim, abrogate its setoff rights and provide an improper windfall to the Debtors' estate.

OBJECTION

14. Chainview is identified as claim number 351 and schedule F number GGC 3.1.0104 on Exhibit 1 to the Setoff Plan Supplement. In the Motion, the Debtors seek to reduce Chainview's claim based on an improper valuation. Therefore, Chainview respectfully requests that this Court deny the Motion as to Chainview's Claim.

A. The Debtors' Motion Improperly Violates Chainview's Property Rights

15. Congress's "bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without compensation." *United States v. Sec. Indus. Bank*, 459 U.S. 70, 75 (1982); *see also Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589-90 (1935); *City of New York v. Quanta Res. Corp. (In re Quanta Res. Corp.)*, 739 F.2d 912,922 (3d Cir. 1984) ("The rights of a secured creditor in the debtor's assets are 'property' subject to a 'taking.'").

16. Chainview has the right to exercise its contractual setoff remedies under New York law pursuant to the MLA and Loan Documents. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 654 B.R. 224, 234 (Bankr. S.D.N.Y. 2023) ("The Bankruptcy Code 'does not establish an independent right of setoff, but section 553 does preserve any right of setoff that may exist under applicable non-bankruptcy law'") (citing *In re Lehman Brothers Holdings Inc.*, 433 B.R. 101, 107 (Bankr. S.D.N.Y. 2010)).

17. Chainview's setoff rights are based in the contract and cannot be abrogated absent just compensation. Rather than compensate Chainview, the Debtors, through the Motion, seek to avoid compensation altogether.

B. The Debtors' Proposed Valuation Date Provides an Improper Windfall to the Debtors

18. "Valuation is not an exact science." *In re Genco Shipping Trading, Ltd.*, 513 B.R. 233, 242 (Bankr. S.D.N.Y. 2014) (citations omitted). Rather, "[v]aluation is a guess compounded by an estimate." *In re Spansion*, 426 B.R. 114, 130 (Bankr. D. Del. 2010) (citing *Consolidated Rock Prods. Co. v. DuBois*, 312 U.S. 510, 526, (1941)).

19. It is not settled that the Petition Date is the appropriate time to value collateral. *In re Sears Holding Corp.*, 51 F.4th 53, 61, n.4 (2d Cir. 2023). Bankruptcy courts are granted

deference with regards to the appropriate time to value collateral. *In re Heritage Highgate, Inc.*, 679 F.3d 132, 141 (3d Cir. 2012). The *Sears* court valued the collateral as of the Petition Date because the parties did not challenge the Petition Date as the valuation date. *Sears*, 51 F.4th at 61, n.4. Here, the Petition Date is not the appropriate date to measure the value of the collateral. Rather, Chainview submits that the appropriate valuation date is when it terminated its contract with the GGC Debtors on November 15, 2022 and when it provided notice of many defaults under the MLA and the Loan Documents.

20. The Court has the power to determine how setoffs should be allocated. *See IRS v. Martinez*, CIVIL ACTION NO. 1:06-CV-1130, 2007 U.S. Dist. LEXIS 6163, at *10 (M.D. Pa. Jan. 29, 2007); *In re Westchester Structures, Inc.*, 181 B.R. 730, 739 (Bankr. S.D.N.Y. 1995) (citations omitted).

21. Courts routinely deny setoff or recoupment scenarios when it would result in a windfall to a party. *See, e.g., In re Peterson Distrib.*, 82 F.3d 956, 963 (10th Cir. 1996); *In re ADI Liquidation, Inc.*, Case No. 14-12092 (KJC), 2015 Bankr. LEXIS 1611, at *15-16 (Bankr. D. Del. May 5, 2015); *In re Circuit City Stores, Inc.*, Case No. 08-35653, 2009 Bankr. LEXIS 4011, at *22 (Bankr. E.D. Va. Dec. 3, 2009); *Sacramento Mun. Util. Dist. v. Mirant Ams. Energy Mktg. LP (In re Mirant Corp.)*, 331 B.R. 693, 696 (N.D. Tex. 2005) (noting that “recoupment is appropriate when a buyer erroneously overpays a seller for goods or services” and more broadly to “prevent a windfall to the debtor in the overpayment context”).

22. In other instances, bankruptcy courts deny approval of management incentive plans where debtors have been found to have manipulated the debtor’s enterprise valuation to receive a windfall in the incentive plan following confirmation. *In re Spansion, Inc.*, 426 B.R. 114, 139 (Bankr. D. Del. 2010) (court agreed with objector’s assertions that the “Equity Incentive

Plan is not offered in good faith because the Debtors have purposefully lowered enterprise valuation to receive a windfall from the Equity Incentive Program after Plan confirmation”). Similarly, courts in this district have denied plan confirmation where recoupment provisions improperly deprive creditors’ rights providing the debtors with an improper windfall. *See In re Ditech Holding Corp.*, 606 B.R. 544, 600-601 (Bankr. S.D.N.Y. 2019).

23. Here, the Debtors are attempting to take advantage of market shifts in digital assets between the date the MLA and Loan Documents were terminated (November 15, 2022), entitling Chainview to exercise its setoff remedies, and the Debtors’ Chapter 11 filing two months later on January 19, 2023. This Court cannot grant its imprimatur to such conduct.

24. The GGC Debtor is effectively keeping Chainview short the asset borrowed indefinitely and earning interest on that asset. Granting the Motion as to Chainview would set a dangerous precedent.

25. Accordingly, Chainview requests that this Court deny the Motion as to Chainview.

CONCLUSION

26. For the reasons set forth herein, Chainview respectfully requests that this Court deny the Motion as to Chainview’s Claim.

Dated: March 8, 2024
New York, New York

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CERTIFICATE OF SERVICE & CM/ECF FILING

23-10063

In re: Genesis Global Holdco, LLC, et al., Debtors.

I hereby certify that one (1) copy of the foregoing Objection Of Chainview Capital Fund, LP To Debtors' Motion (I) For Relief From The Automatic Stay, To The Extent Applicable, To Allow For Setoff Of Mutual Obligations And (II) To Allow Certain Claims In Connection Therewith For Chainview Capital Fund, LP to be served on the below via **US Mail**:

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